

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
7 DISTRICT OF NEVADA

8 * * *

9 JOSEPH MIZZONI,

Case No. 3:15-cv-00313-MMD-VPC

10 Plaintiff,

ORDER

11 v.

12 STATE OF NEVADA, et al.,

13 Defendants.

14 **I. DISCUSSION**

15 Currently pending are several motions filed by Plaintiff, including: motion seeking
16 permission to know due process of FRCP and laws to this case number and request to
17 add one defendant (dkt no. 8); motion seeking permission to receive emergency
18 injunctive relief (dkt no. 11); motion seeking permission to receive emergency injunctive
19 relief under FRCP 60(b) and judicial notice (dkt. no. 13); motion seeking permission to
20 receive emergency injunctive relief for neck injury by defendants and add defendants for
21 non-medical treatment (dkt. no. 14); motion seeking permission to report retaliation to
22 the plaintiff by assaults and drugging him illegally to cause an incident (dkt. no. 15);
23 motion seeking permission to receive emergency injunctive relief for left kidney/testicle
24 injury done on March 28, 2015 (dkt. no. 16).

25 On January 4, 2016, the Court issued an order allowing Plaintiff to proceed on
26 his First Amendment retaliation and Eighth Amendment excessive force claims against
27 defendants C. Smith, Ardingier, and Robertson. (Dkt. no. 5 at 1-2.) The Court further
28 stayed the case for ninety (90) days to allow Plaintiff and Defendants an opportunity to

1 settle their dispute. During the 90-day stay period, the Court directed: “[N]o other
2 pleadings or papers shall be filed in this case, and the parties shall not engage in any
3 discovery.” (*Id.* at 2.) The Court issued a later order setting the mediation for April 26,
4 2016. (Dkt. no. 10.)

5 Plaintiff’s pending motions were all filed subsequent to the stay issued in this
6 case, contrary to the Court’s directive that no pleadings or papers should be filed. The
7 Court has conducted a preliminary review of all of Plaintiff’s motions. The Court will
8 deny all of these motions without prejudice due to the temporary stay in this case, with
9 the exception of the motion seeking permission to receive injunctive relief for neck injury
10 (dkt. no. 14).

11 **A. Motion for Injunctive Relief Re: Neck Injury (Dkt. no. 14)**

12 On March 7, 2016, Plaintiff filed an emergency motion for injunctive relief
13 regarding a neck injury. (Dkt. no. 14.) In the motion, Plaintiff alleges that, due to the
14 incidents that occurred on March 28, 2015, that are the subject of his complaint (dkt. no.
15 4), he sustained severe neck injuries and he has not received treatment for, beyond x-
16 rays taken in September 2015. (Dkt. no. 14 at 3.) He further alleges that on February
17 28, 2016, while he was sleeping, his “vertebrae popped out and pulled [his] spinal cord
18 and muscle like [his] neck is broken on one side.” (*Id.*) Plaintiff has filed numerous
19 grievances regarding his neck injury. (*Id.*) Plaintiff fears that lack of treatment will result
20 in him becoming permanently paralyzed.

21 Injunctive relief, whether temporary or permanent, is an “extraordinary remedy,
22 never awarded as of right.” *Winter v. Natural Res. Defense Council*, 555 U.S. 7, 24
23 (2008). “A plaintiff seeking a preliminary injunction must establish that he is likely to
24 succeed on the merits, that he is likely to suffer irreparable harm in the absence of
25 preliminary relief, that the balance of equities tips in his favor, and that an injunction is in
26 the public interest.” *Am. Trucking Ass’ns, Inc. v. City of Los Angeles*, 559 F.3d 1046,
27 1052 (9th Cir. 2009) (quoting *Winter*, 555 U.S. at 20). Furthermore, under the Prison
28 Litigation Reform Act (“PLRA”), preliminary injunctive relief must be “narrowly drawn,”

1 must “extend no further than necessary to correct the harm,” and must be “the least
2 intrusive means necessary to correct the harm.” 18 U.S.C. § 3626(a)(2).

3 The Court finds that, based on the facts alleged in the complaint regarding the
4 use of excessive force and the present motion, Plaintiff has alleged a colorable
5 excessive force claim (see dkt. no. 3 at 6) and that, based on the nature of the
6 allegations, Plaintiff could likely suffer irreparable harm for the failure to receive
7 treatment for his neck injury. As such, the Court orders that the Attorney General’s
8 Office will have seven (7) days from the date of this order to file their response to
9 Plaintiff’s motion for preliminary injunction. The Court will not allow Plaintiff to add any
10 additional defendants at this time.

11 **II. CONCLUSION**

12 For the foregoing reasons, it is ordered that Plaintiff’s motion seeking permission
13 to know due process of FRCP and laws to this case number and request to add one
14 defendant (dkt no. 8) is denied without prejudice.

15 It is further ordered that Plaintiff’s motion seeking permission to receive
16 emergency injunctive relief (dkt no. 11) is denied without prejudice.

17 It is further ordered that Plaintiff’s motion seeking permission to receive
18 emergency injunctive relief under FRCP 60(b) and judicial notice (dkt. no. 13) is denied
19 without prejudice.

20 It is further ordered that a decision on Plaintiff’s motion seeking permission to
21 receive emergency injunctive relief for neck injury by defendants and add defendants for
22 non-medical treatment (dkt. no. 14) is deferred.

23 It is further ordered that Plaintiff’s motion seeking permission to report retaliation
24 to the plaintiff by assaults and drugging him illegally to cause an incident (dkt. no. 15) is
25 denied without prejudice.

26 It is further ordered that Plaintiff’s motion seeking permission to receive
27 emergency injunctive relief for left kidney/testicle injury done on March 28, 2015 (dkt.
28 no. 16) is denied without prejudice.

It is further ordered that Defendants' request for instruction (dkt. no. 17) is granted.

It is further ordered that Defendants file a response to Plaintiff's motion seeking permission to receive emergency injunctive relief for neck injury by defendants (dkt. no. 14) within seven (7) days of the date of entry of this order.

DATED THIS 1st day of April 2016.



MIRANDA M. DU
UNITED STATES DISTRICT JUDGE